IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

APPEAL FROM ORDER NO. 13 OF 2006
AND
CIVIL APPLICATION NO. 47 OF 2006

Home Craft Engineers & Builders,
Shop no.1, Bldg. no.6,
Techno Park, Chogm road,
Alto – Porvorim,
Bardez Goa 403 521,
Being represented by its
Power of Attorney holder,
Shri B.P. Nayak,
Residing at Laxmi Villa,
Tonca Caranzalem Goa. .... Appellant

V/s

1. Executive Engineer,
   Office of the Executive Engineer,
   Works Division XVII (PHE-N)
   Public Works Department,
   Government of Goa,
   Alto Porvorim,
   Bardez Goa 403 521.

2. State of Goa,
   represented by its Secretary,
   Public Works Department,
   Secretariat, Alto Porvorim,
   Bardez Goa 403 521.

3. M/s. La Mere Developers,
   Represented by Shri Subhash Desai,
   Having office at GF – 1, Bldg. No. 494,
   Techno Cidade, Chogm road,
   Porvorim-Goa. .... Respondents

Shri A.N.S. Nadkarni with Ms. Archana A.N. Gaunekar, Advocate for the Appellant.

Ms. W. Coutinho, Governement Advocate for Respondents No. 1 & 2.

CORAM : **P.V. KAKADE, J.**

DATE : **18th August, 2006**

ORAL ORDER

Heard learned Counsel for both the parties.

2. The appellant has preferred this appeal against the order passed by the IInd Ad-hoc Additional District Judge, Panaji rejecting the application for mandatory injunction by order dated 11/10/2005.

3. The plaintiff filed the suit for mandatory injunction, compensation, damages and other consequential reliefs and also filed an application for mandatory injunction praying that defendants be directed to release water connection to plaintiff from the existing pipeline.

4. Perusal of the record shows that, the mandatory injunction came to be refused on the ground that such injunction should not be

granted when the relief claimed could be valued in terms of money. In my considered view, this view taken by the lower Court cannot be applicable to the present case in the sense that the only dispute between the parties is in respect of paying of contribution alleged to be of Rs. 37,000/- for the purpose of water connection which was supposed to be released to the plaintiff and which was laid at the expense of 4 builders.

5. In this regard, the entire controversy at the interim stage would be restored by direction to the plaintiff to deposit an amount of Rs. 37,000/- in the Court and then to direct the lower Court to proceed with the adjudication of the suit on merits.

6. In view of this position, it is hereby directed that the plaintiff shall deposit an amount of Rs. 37,000/- in the lower Court and on that basis, the order dated 11/10/2005 passed by the lower Court is set aside and the interim order in terms of prayer clause 13(i) is allowed. It is clarified that this order is purely of interim nature and without prejudice to the rights and contentions of both the parties to be adjudicated by the trial Court in the course of the final hearing of the suit. It is further directed that the lower Court shall proceed with the adjudication of the suit so as to

complete it within 6 months from the date of this order.

7. With these directions the Appeal From Order No. 13 of 2006 and Civil Application No. 47 of 2006 stand disposed of with no order as to costs. The deposit shall be subject to the final order passed by the Court in the trial.

P.V. KAKADE, J.

NH